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11 CENTER FOR COMMUNITY ACTION  
12 AND ENVIRONMENTAL JUSTICE

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 CENTER FOR COMMUNITY  
16 ACTION AND ENVIRONMENTAL  
17 JUSTICE, a non-profit corporation,

18 Plaintiff,

19 vs.

20 MILL MAN STEEL, INC., a Colorado  
21 corporation,

22 Defendant.

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

23 CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL  
24 JUSTICE (“CCA EJ”), a California non-profit corporation, by and through its counsel,  
25 hereby alleges:

26 **I. JURISDICTION AND VENUE**

27 1. This is a civil suit brought under the citizen suit enforcement provisions  
28 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean

1 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties  
 2 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33  
 3 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the  
 4 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02  
 5 (power to issue declaratory relief in case of actual controversy and further necessary  
 6 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);  
 7 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

8 2. On November 9, 2016, Plaintiff provided notice of Defendant’s  
 9 violations of the Act, and of Plaintiff’s intention to file suit against Defendant, to the  
 10 Administrator of the United States Environmental Protection Agency (“EPA”); the  
 11 Administrator of EPA Region IX; the Executive Director of the California State Water  
 12 Resources Control Board (“State Board”); the Executive Officer of the California  
 13 Regional Water Quality Control Board, Santa Ana Region (“Regional Board”); and to  
 14 Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct  
 15 copy of CCAEJ’s notice letter is attached as Exhibit A, and is incorporated by  
 16 reference.

17 3. More than sixty days have passed since notice was served on Defendant  
 18 and the State and federal agencies. Plaintiff is informed and believes, and thereupon  
 19 alleges, that neither the EPA nor the State of California has commenced or is  
 20 diligently prosecuting a court action to redress the violations alleged in this complaint.  
 21 This action’s claim for civil penalties is not barred by any prior administrative penalty  
 22 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

23 4. Venue is proper in the Central District of California pursuant to Section  
 24 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is  
 25 located within this judicial district.  
 26

## 27 **II. INTRODUCTION**

28 5. This complaint seeks relief for Defendant’s discharges of polluted storm

1 water from Defendant's industrial facility located at 15585 Arrow Route in Fontana,  
 2 California ("Facility") in violation of the Act and National Pollutant Discharge  
 3 Elimination System ("NPDES") Permit No. CAS000001, State Water Resources  
 4 Control Board Water Quality Order No. 97-03-DWQ ("1997 Permit"), as renewed by  
 5 Water Quality Order No. 2014-0057-DWQ ("2015 Permit") (the permits are  
 6 collectively referred to hereinafter as the "Permit" or "General Permit"). Defendant's  
 7 violations of the discharge, treatment technology, monitoring requirements, and other  
 8 procedural and substantive requirements of the Permit and the Act are ongoing and  
 9 continuous.

### 10 **III. PARTIES**

11 6. Plaintiff CCAEJ is a non-profit public benefit corporation under the laws  
 12 of the State of California with its main office in Jurupa Valley, California. CCAEJ is  
 13 dedicated to working with communities to advocate for environmental justice and  
 14 pollution prevention. CCAEJ and its members are deeply concerned with protecting  
 15 the environment in and around their communities, including the Santa Ana River  
 16 Watershed. To further these goals, CCAEJ actively seeks federal and state agency  
 17 implementation of the Act and other laws and, where necessary, directly initiates  
 18 enforcement actions on behalf of itself and its members.

19 7. CCAEJ has members living in the community adjacent to the Facility and  
 20 the Santa Ana River Watershed. They enjoy using the Santa Ana River and its  
 21 tributaries for recreation and other activities. Members of CCAEJ use and enjoy the  
 22 waters into which Defendant has caused, is causing, and will continue to cause,  
 23 pollutants to be discharged. Members of CCAEJ use those areas to recreate and view  
 24 wildlife, among other things. Defendant's discharges of pollutants threaten or impair  
 25 each of those uses or contribute to such threats and impairments. Thus, the interests of  
 26 CCAEJ's members have been, are being, and will continue to be adversely affected by  
 27 Defendant's failure to comply with the Clean Water Act and the Permit. The relief  
 28

1 sought herein will redress the harms to Plaintiff caused by Defendant's activities.

2 8. CCAEJ brings this action on behalf of its members. CCAEJ's interest in  
3 reducing Defendant's discharges of pollutants into the Santa Ana River and its  
4 tributaries and requiring Defendant to comply with the requirements of the General  
5 Permit are germane to its purposes. Litigation of the claims asserted and relief  
6 requested in this Complaint does not require the participation in this lawsuit of  
7 individual members of CCAEJ.

8 9. Continuing commission of the acts and omissions alleged above will  
9 irreparably harm Plaintiff and one or more of its members, for which harm they have no  
10 plain, speedy or adequate remedy at law.

11 10. Defendant MILL MAN STEEL, INC. ("Mill Man") is a corporation that  
12 operates the Facility at issue in this action.

13 **IV. STATUTORY BACKGROUND**

14 11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of  
15 any pollutant into waters of the United States, unless such discharge is in compliance  
16 with various enumerated sections of the Act. Among other things, Section 301(a)  
17 prohibits discharges not authorized by, or in violation of, the terms of an NPDES  
18 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

19 12. Section 402(p) of the Act establishes a framework for regulating  
20 municipal and industrial storm water discharges under the NPDES program. 33  
21 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by  
22 Section 402(p) to regulate industrial storm water discharges through individual  
23 permits issued to dischargers or through the issuance of a single, statewide general  
24 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

25 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator  
26 of the U.S. EPA has authorized California's State Board to issue NPDES permits  
27 including general NPDES permits in California.  
28

1           **General Permit**

2           14.     The State Board elected to issue a statewide general permit for industrial  
3 storm water discharges. The State Board originally issued the General Permit on or  
4 about November 19, 1991. The State Board modified the General Permit on or about  
5 September 17, 1992. Pertinent to this action, the State Board reissued the General  
6 Permit on or about April 17, 1997 (the “1997 Permit”), and again on or about April 1,  
7 2014 (the “2015 Permit”), pursuant to Section 402(p) of the Clean Water Act, 33  
8 U.S.C. § 1342(p). The 1997 Permit was in effect between 1997 and June 30, 2015.  
9 The 2015 Permit went into effect on July 1, 2015. The 2015 Permit maintains or  
10 makes more stringent the same requirements as the 1997 Permit.

11           15.     In order to discharge storm water lawfully in California, industrial  
12 dischargers must comply with the terms of the General Permit or have obtained and  
13 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

14           16.     The General Permit contains several prohibitions. Effluent Limitation  
15 B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require  
16 dischargers to reduce or prevent pollutants in their storm water discharges through  
17 implementation of the Best Available Technology Economically Achievable (“BAT”)  
18 for toxic and nonconventional pollutants and the Best Conventional Pollutant Control  
19 Technology (“BCT”) for conventional pollutants. Discharge Prohibition A(2) of the  
20 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water  
21 discharges and authorized non-storm water discharges that cause or threaten to cause  
22 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997  
23 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water  
24 discharges to any surface or ground water that adversely impact human health or the  
25 environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving  
26 Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit prohibit  
27 storm water discharges that cause or contribute to an exceedance of any applicable  
28

1 water quality standards contained in Statewide Water Quality Control Plan or the  
2 applicable Regional Board's Basin Plan.

3 17. In addition to absolute prohibitions, the General Permit contains a variety  
4 of substantive and procedural requirements that dischargers must meet. Facilities  
5 discharging, or having the potential to discharge, storm water associated with  
6 industrial activity that have not obtained an individual NPDES permit must apply for  
7 coverage under the State's General Permit by filing a Notice of Intent to Comply  
8 ("NOI"). Dischargers have been required to file NOIs since March 30, 1992.

9 18. Dischargers must develop and implement a Storm Water Pollution  
10 Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities  
11 and measures that comply with the BAT and BCT standards. The General Permit  
12 requires that an initial SWPPP has been developed and implemented before October  
13 1, 1992. The objective of the SWPPP requirement is to identify and evaluate sources  
14 of pollutants associated with industrial activities that may affect the quality of storm  
15 water discharges and authorized non-stormwater discharges from a facility, and to  
16 implement best management practices ("BMPs") to reduce or prevent pollutants  
17 associated with industrial activities in storm water discharges and authorized non-  
18 storm water discharges. *See* 1997 Permit, § A(2); 2015 Permit, § X(C). These BMPs  
19 must achieve compliance with the General Permit's effluent limitations and receiving  
20 water limitations, including the BAT and BCT technology mandates. To ensure  
21 compliance with the General Permit, the SWPPP must be evaluated and revised as  
22 necessary. 1997 Permit, §§ A(9), (10); 2015 Permit, § X(B). Failure to develop or  
23 implement an adequate SWPPP, or update or revise an existing SWPPP as required, is  
24 a violation of the General Permit. 2015 Permit, Fact Sheet § I(1).

25 19. Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a  
26 SWPPP. Among other requirements, the SWPPP must include: a pollution prevention  
27 team; a site map; a list of significant materials handled and stored at the site; a  
28

1 description of potential pollutant sources; an assessment of potential pollutant sources;  
2 and a description of the BMPs to be implemented at the facility that will reduce or  
3 prevent pollutants in storm water discharges and authorized non-stormwater  
4 discharges, including structural BMPs where non-structural BMPs are not effective.  
5 Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP  
6 requirements as the 1997 Permit, except that all dischargers are now required to  
7 develop and implement a set of minimum BMPs, as well as any advanced BMPs as  
8 necessary to achieve BAT/BCT, which serve as the basis for compliance with the  
9 2015 Permit’s technology-based effluent limitations and receiving water limitations.  
10 See 2015 Permit, § X(H). The 2015 Permit further requires a more comprehensive  
11 assessment of potential pollutant sources than the 1997 Permit; more specific BMP  
12 descriptions; and an additional BMP summary table identifying each identified area of  
13 industrial activity, the associated industrial pollutant sources, the industrial pollutants,  
14 and the BMPs being implemented. See 2015 Permit, §§ X(G)(2), (4), (5). Section  
15 X(E) of the 2015 Permit requires that the SWPPP map depict, *inter alia*, all storm  
16 water discharge locations.

17         20. The 2015 Permit requires dischargers to implement and maintain, to the  
18 extent feasible, all of the following minimum BMPs in order to reduce or prevent  
19 pollutants in industrial storm water discharges: good housekeeping, preventive  
20 maintenance, spill and leak prevention and response, material handling and waste  
21 management, erosion and sediment controls, an employee training program, and  
22 quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to  
23 implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015  
24 Permit, Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to  
25 implement and maintain, to the extent feasible, any one or more of the following  
26 advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial  
27 storm water discharges: exposure minimization BMPs, storm water containment and  
28



1 discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See  
2 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to  
3 achieve compliance with either technology or water quality standards is a violation of  
4 the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP  
5 descriptions and a BMP Summary Table. See 2015 Permit, § X(H)(4), (5).

6 21. The General Permit requires dischargers to develop and implement an  
7 adequate written Monitoring and Reporting Program. The primary objective of the  
8 Monitoring and Reporting Program is to detect and measure the concentrations of  
9 pollutants in a facility's discharge to ensure compliance with the General Permit's  
10 discharge prohibitions, effluent limitations, and receiving water limitations. As part  
11 of their monitoring program, dischargers must identify all storm water discharge  
12 locations that produce a significant storm water discharge, evaluate the effectiveness  
13 of BMPs in reducing pollutant loading, and evaluate whether pollution control  
14 measures set out in the SWPPP are adequate and properly implemented. The 1997  
15 Permit required dischargers to collect storm water samples during the first hour of  
16 discharge from the first storm event of the wet season, and at least one other storm  
17 event during the wet season, from all storm water discharge locations at a facility. See  
18 1997 Permit, § B(5). A sample must be collected from each discharge point at the  
19 facility, and in the event that an operator fails to collect samples from the first storm  
20 event, the operators must still collect samples from two other storm events and "shall  
21 explain in the Annual Report why the first storm event was not sampled." See 1997  
22 Permit, § B(5)(a). The 2015 Permit now mandates that facility operators sample *four*  
23 (rather than two) storm water discharges from all discharge locations over the course  
24 of the reporting year. See 2015 Permit, §§ XI(B)(2), (3).

25 22. Facilities are required to make visual observations of storm water  
26 discharges. The visual observations must represent the quality and quantity of the  
27 facility's storm water discharges from the storm event. 1997 Permit, § B(7); 2015  
28



1 Permit, § XI.A.

2 23. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and  
3 analyze storm water samples from two qualifying storm events (“QSEs”) during the  
4 first half of each reporting year (July 1 to December 31) and two QSEs during the  
5 second half of each reporting year (January 1 to June 30).

6 24. Under the 1997 Permit, facilities must analyze storm water samples for  
7 “toxic chemicals and other pollutants that are likely to be present in storm water  
8 discharges in significant quantities.” 1997 Permit, § B(5)(c)(ii). Under the 2015  
9 Permit, facilities must analyze storm water samples for “[a]dditional parameters  
10 identified by the Discharger on a facility-specific basis that serve as indicators of the  
11 presence of all industrial pollutants identified in the pollutant source assessment.”  
12 2015 Permit, § XI(B)(6)(c).

13 25. Section B(14) of the 1997 Permit requires dischargers to include  
14 laboratory reports with their Annual Reports submitted to the Regional Board. This  
15 requirement is continued with the 2015 Permit. Fact Sheet, Paragraph O.

16 26. The 1997 Permit, in relevant part, requires that the Annual Report  
17 include an Annual Comprehensive Site Compliance Evaluation Report (“ACSCE  
18 Report”). 1997 Permit, § B(14). As part of the ACSCE Report, the facility operator  
19 must review and evaluate all of the BMPs to determine whether they are adequate or  
20 whether SWPPP revisions are needed. The Annual Report must be signed and  
21 certified by a duly authorized representative, under penalty of law that the information  
22 submitted is true, accurate, and complete to the best of his or her knowledge. The  
23 2015 Permit now requires operators to conduct an Annual Comprehensive Facility  
24 Compliance Evaluation (“Annual Evaluation”) that evaluates the effectiveness of  
25 current BMPs and the need for additional BMPs based on visual observations and  
26 sampling and analysis results. *See* 2015 Permit, § XV.

27 27. The General Permit does not provide for any mixing zones by  
28

1 dischargers. The General Permit does not provide for any receiving water dilution  
2 credits to be applied by dischargers.

3 **Basin Plan and Water Quality Standards**

4 28. The Regional Board has identified beneficial uses of the Santa Ana  
5 Region's waters and established water quality standards for the Santa Ana River and  
6 its tributaries in the "Water Quality Control Plan for the Santa Ana River Basin  
7 (Region 8)," generally referred to as the Basin Plan.

8 29. The beneficial uses of these waters include, among others, groundwater  
9 recharge, water contact recreation, non-contact water recreation, wildlife habitat,  
10 warm freshwater habitat, and rare, threatened or endangered species. The non-contact  
11 water recreation use is defined as "[u]ses of water for recreational activities involving  
12 proximity to water, but not normally involving contact with water where water  
13 ingestion is reasonably possible. These uses include, but are not limited to,  
14 picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine  
15 life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above  
16 activities."

17 30. The Basin Plan includes a narrative toxicity standard which states that  
18 "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic  
19 resources to levels which are harmful to human health."

20 31. The Basin Plan includes a narrative suspended and settleable solids  
21 standard which states that "Inland surface waters shall not contain suspended or  
22 settleable solids in amounts which cause a nuisance or adversely affect beneficial  
23 uses..."

24 32. The Basin Plan provides that "[t]he pH of inland surface waters shall not  
25 be raised above 8.5 or depressed below 6.5..."

26 33. The Basin Plan contains a narrative floatables standard which states that  
27 '[w]aste discharges shall not contain floating materials, including solids, liquids, foam  
28

1 or scum, which cause a nuisance or adversely affect beneficial uses.”

2 34. The EPA has adopted a freshwater numeric water quality standard for  
3 zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed.Reg. 31712  
4 (May 18, 2000) (“California Toxics Rule” or “CTR”).

5 35. EPA has established Parameter Benchmark Values as guidelines for  
6 determining whether a facility discharging industrial storm water has implemented the  
7 requisite BAT and BCT. These benchmarks represent pollutant concentrations at  
8 which a storm water discharge could potentially impair, or contribute to impairing,  
9 water quality, or affect human health from ingestion of water or fish. The following  
10 EPA benchmarks have been established for pollution parameters applicable to the  
11 Facility: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100  
12 mg/L; oil and grease (“O&G”) – 15 mg/L; zinc – 0.26 mg/L; aluminum – 0.75 mg/L;  
13 nitrate + nitrite as nitrogen (“N+N”) – 0.68 mg/L; and iron – 1.0 mg/L.

14 36. These benchmarks are reflected in the 2015 Permit in the form of  
15 Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs,  
16 which reflect the 2008 MSGP benchmark values, and instantaneous maximum NALs,  
17 which are derived from a Water Board dataset. The following annual NALs have  
18 been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; zinc –  
19 0.26 mg/L; aluminum – 0.75 mg/L; N+N – 0.68 mg/L; and iron – 1.0 mg/L. An  
20 exceedance of annual NALs occurs when the average of all samples obtained for an  
21 entire facility during a single reporting year is greater than a particular annual NAL.  
22 The reporting year runs from July 1 to June 30. The 2015 Permit also establishes the  
23 following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and  
24 O&G – 25 mg/L. An instantaneous maximum NAL exceedance occurs when two or  
25 more analytical results from samples taken for any single parameter within a reporting  
26 year exceed the instantaneous maximum NAL value (for TSS and O&G) or are  
27 outside of the instantaneous maximum NAL range for pH. When a discharger  
28

1 exceeds an applicable NAL, it is elevated to “Level 1 Status,” which requires a  
 2 revision of the SWPPP and additional BMPs. If a discharger exceeds an applicable  
 3 NAL during Level 1 Status, it is then elevated to “Level 2 Status.” For Level 2 Status,  
 4 a discharger is required to submit an Action Plan requiring a demonstration of either  
 5 additional BMPs to prevent exceedances, a determination that the exceedance is solely  
 6 due to non-industrial pollutant sources, or a determination that the exceedance is  
 7 solely due to the presence of the pollutant in the natural background.

8 37. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
 9 enforcement actions against any “person,” including individuals, corporations, or  
 10 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)  
 11 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33  
 12 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil  
 13 penalties of up to \$37,500 per day per violation for all violations occurring since  
 14 October 28, 2011 up to and including November 2, 2015, and up to \$51,570 for  
 15 violations occurring after November 2, 2015, pursuant to Sections 309(d) and 505 of  
 16 the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

## 17 **V. STATEMENT OF FACTS**

18 38. Defendant Mill Man owns and/or operates the Facility, a 3.5 acre  
 19 industrial site located within the City of Fontana.

20 39. The Facility is a steel processing and fabrication facility that falls within  
 21 Standard Industrial Classification (“SIC”) Code 3441.

22 40. Based on CCAEJ’s investigation, including a review of the Facility’s  
 23 Notice of Intent to Comply with the Terms of the Industrial General Permit (“NOI”),  
 24 SWPPP, aerial photography, and CCAEJ’s information and belief, storm water is  
 25 collected and discharged from the Facility through a series of channels that discharge  
 26 via at least one outfall. The outfall discharges storm water and pollutants contained in  
 27 that storm water to channels that flow into the Santa Ana River. Plaintiff is informed  
 28

1 and believes and thereupon alleges that pollutants discharged from the Facility flow  
2 into the West Fontana Channel, which flows into the San Sevaine Creek, which then  
3 flows into Reach 3 of the Santa Ana River, and then into the Pacific Ocean.

4 41. Plaintiff is informed and believes, and thereupon alleges that the storm  
5 water flows over the surface of the Facility where industrial activities occur including  
6 metal cutting areas, storage areas, loading/unloading areas, and areas where airborne  
7 materials associated with the industrial processes at the Facility may settle onto the  
8 ground. Plaintiff is informed and believes, and thereupon alleges that storm water  
9 flowing over these areas collects suspended sediment, dirt, metals, and other  
10 pollutants as it flows towards the storm water discharge locations.

11 42. On information and belief, Plaintiff alleges that the majority of storm  
12 water discharges from the Facility contain storm water that is commingled with runoff  
13 from areas at the Facility where industrial processes occur.

14 43. Plaintiff is informed and believes, and thereupon alleges, that the  
15 management practices at the Facility are currently inadequate to prevent the sources of  
16 contamination described above from causing the discharge of pollutants to waters of  
17 the United States. The Facility lacks sufficient structural controls such as grading,  
18 berming, roofing, containment, or drainage structures to prevent rainfall and storm  
19 water flows from coming into contact with exposed areas of contaminants. The  
20 Facility lacks sufficient structural controls to prevent the discharge of water once  
21 contaminated. The Facility lacks adequate storm water pollution treatment  
22 technologies to treat storm water once contaminated.

23 44. Since at least November 27, 2015, Defendant has collected and analyzed  
24 samples or arranged for storm water discharge samples to be collected and analyzed at  
25 the Facility. The sample results were reported in certified documents submitted to the  
26 Regional Board.

27 45. The Facility has consistently reported high pollutant levels from its storm  
28

1 water sampling results.

2 46. The Facility has violated numeric and narrative water quality standards  
3 established in the Basin Plan and have thus violated Discharge Prohibition A(2) and  
4 Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge  
5 Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of  
6 the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3)  
7 of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

8 47. The levels of zinc in storm water detected by the Facility have exceeded  
9 the freshwater numeric water quality standard established by the EPA of 0.12 mg/L  
10 for zinc (CMC). For example, on December 11, 2015, the level of zinc measured  
11 from one of the Facility's storm water outfalls was 0.66 mg/L. That level of zinc is  
12 5.5 times the CMC for zinc. The Facility also exceeded the CMC for zinc on  
13 November 27, 2015.

14 48. The Facility has violated the narrative water quality standard for  
15 suspended/settleable solids in the Basin Plan, repeatedly observing cloudy storm  
16 water discharges from the Facility. This has occurred on November 29, 2012;  
17 October 31, 2012; April 3, 2012; March 26, 2012; January 23, 2012; and December  
18 12, 2011.

19 49. The levels of TSS in storm water detected by the Facility have exceeded  
20 the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and  
21 the State Board, respectively. For example, on December 11, 2015, the level of TSS  
22 measured by Defendant at its outfall was 270 mg/L. That level of TSS is nearly three  
23 times the benchmark value and annual NAL for TSS. Defendant also has measured  
24 levels of TSS in storm water discharged from the Facility in excess of 100 mg/L on  
25 November 27, 2015.

26 50. The levels of iron in storm water detected by the Facility have exceeded  
27 the benchmark value and annual NAL for iron of 1.0 mg/L established by EPA and  
28

1 the State Board, respectively. For example, on December 11, 2015, the level of iron  
2 measured by Defendant at its outfall was 13 mg/L. That level of iron is 13 times the  
3 benchmark value and annual NAL for iron. Defendant also has measured levels of  
4 iron in storm water discharged from the Facility in excess of 1.0 mg/L on November  
5 27, 2015.

6 51. The levels of aluminum in storm water detected by the Facility have  
7 exceeded the benchmark value and annual NAL for aluminum of 0.75 mg/L  
8 established by EPA and the State Board, respectively. For example, on December 11,  
9 2015, the level of aluminum measured by Defendant at its outfall was 7.8 mg/L. That  
10 level of aluminum is over ten times the benchmark value and annual NAL for  
11 aluminum. Defendant also has measured levels of aluminum in storm water  
12 discharged from the Facility in excess of 0.75 mg/L on November 27, 2015.

13 52. The levels of zinc in storm water detected by the Facility have exceeded  
14 the benchmark value and annual NAL for zinc of 0.26 mg/L established by EPA and  
15 the State Board, respectively. For example, on December 11, 2015, the level of zinc  
16 measured by Defendant at its outfall was 0.66 mg/L. That level of zinc is over 2.5  
17 times the benchmark value and annual NAL for zinc. Defendant also has measured  
18 levels of zinc in storm water discharged from the Facility in excess of 0.26 mg/L on  
19 November 27, 2015.

20 53. The levels of N+N in storm water detected by the Facility have exceeded  
21 the benchmark value and annual NAL for N+N of 0.68 mg/L established by EPA and  
22 the State Board, respectively. On December 11, 2015, the level of N+N measured by  
23 Defendant at its outfall was 1.11.1 mg/L. That level of N+N is over 1.5 times the  
24 benchmark value and annual NAL for N+N.

25 54. On information and belief, CCAEJ alleges that Mill Man failed to collect  
26 and analyze storm water discharges from the Facility during the 2011-2012, 2012-  
27 2013, 2013-2014, and 2014-2015 wet seasons.  
28



1           55. On information and belief, CCAEJ alleges that Mill Man's storm water  
2 discharges are not commingled with run-on from neighboring properties.

3           56. On information and belief, CCAEJ alleges that Mill Man failed to collect  
4 and analyze samples from four storm water discharges from the Facility during the  
5 2015-2016 reporting year.

6           57. On information and belief, CCAEJ alleges that Mill Man failed to  
7 analyze its November 27, 2015 storm water discharge for N+N.

8           58. On information and belief, CCAEJ alleges that Mill Man failed to  
9 conduct monthly visual observations of storm water discharges during numerous  
10 months during the past five years. Based on precipitation data compared to the dates  
11 in which the Facility did conduct monthly visual observation of storm water  
12 discharges, CCAEJ alleges that Mill Man failed to conduct monthly visual  
13 observations of storm water discharges at its storm water discharge locations on  
14 numerous occasions. CCAEJ alleges that Defendant has failed to conduct monthly  
15 visual observations of storm water discharges from the Facility during the following  
16 months: February 2012, November 2014, December 2014, January 2015, April 2015,  
17 and May 2015.

18           59. On information and belief, CCAEJ alleges that Mill Man has consistently  
19 failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015  
20 Permit, by failing to complete proper ACSCE Reports as well as proper Annual  
21 Evaluations for the Facility.

22           60. On information and belief, Plaintiff alleges that since at least December  
23 8, 2011, Defendant has failed to implement BAT and BCT at the Facility for its  
24 discharges of TSS, iron, zinc, aluminum, N+N, and other potentially un-monitored  
25 pollutants. Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A)  
26 of the 2015 Permit requires that Defendant implement BAT for toxic and  
27 nonconventional pollutants and BCT for conventional pollutants by no later than  
28 October 1, 1992. As of the date of this Complaint, Defendant has failed to implement

1 BAT and BCT.

2 61. On information and belief, Plaintiff alleges that since at least December  
3 8, 2011, Defendant has failed to implement an adequate SWPPP for the Facility.  
4 Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for  
5 the Facility does not set forth site-specific best management practices for the Facility  
6 that are consistent with BAT or BCT for the Facility. Plaintiff is informed and  
7 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not  
8 comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails  
9 to include BMPs to minimize dust generated from industrial materials or activities.  
10 The SWPPP fails to include BMPs that cover all stored industrial materials that can be  
11 readily mobilized by contact with storm water. The SWPPP fails to include required  
12 advanced BMPs. The SWPPP fails to describe any efforts to implement and maintain  
13 minimum BMPs. CCAEJ notes that the SWPPP indicates that “COD” is a potential  
14 pollutant from the dumpster and roll-offs. On information and belief, CCAEJ alleges  
15 that COD is not present at the Facility. The SWPPP also fails to identify and  
16 implement advanced BMPs that are not being implemented at the Facility because  
17 they do not reflect best industry practice considering BAT/BCT. According to  
18 information available to CCAEJ, Defendant’s SWPPP has not been evaluated to  
19 ensure its effectiveness and revised where necessary to further reduce pollutant  
20 discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP  
21 does not include each of the mandatory elements required by the General Permit.  
22

23 62. Information available to CCAEJ indicates that as a result of these  
24 practices, storm water containing excessive pollutants is being discharged during rain  
25 events to channels that flow into the West Fontana Channel, which flows into the San  
26 Sevaïne Creek, which then flows into Reach 3 of the Santa Ana River.

27 63. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
28 has failed and continues to fail to alter the Facility’s SWPPP and site-specific BMPs

1 consistent with the General Permit.

2 64. Information available to Plaintiff indicates that Defendant has not  
3 fulfilled the requirements set forth in the General Permit for discharges from the  
4 Facility due to the continued discharge of contaminated storm water. Plaintiff is  
5 informed and believes, and thereupon alleges, that all of the violations alleged in this  
6 Complaint are ongoing and continuous.

7 **VI. CLAIMS FOR RELIEF**

8 **FIRST CAUSE OF ACTION**

9 **Failure to Implement the Best Available and**  
10 **Best Conventional Treatment Technologies**  
11 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

12 65. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
13 fully set forth herein.

14 66. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
15 of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require  
16 dischargers to reduce or prevent pollutants in their storm water discharges through  
17 implementation of BAT for toxic and nonconventional pollutants and BCT for  
18 conventional pollutants. Defendant has failed to implement BAT and BCT at the  
19 Facility for its discharges of TSS, iron, aluminum, zinc, N+N, and other potentially  
20 un-monitored pollutants in violation of Effluent Limitation B(3) of the 1997 Permit  
21 and Effluent Limitation V(A) of the 2015 Permit.

22 67. Each day since December 8, 2011, that Defendant has failed to develop  
23 and implement BAT and BCT in violation of the General Permit is a separate and  
24 distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. §  
25 1311(a).

26 68. Defendant has been in violation of the BAT/BCT requirements every day  
27 since December 8, 2011. Defendant continues to be in violation of the BAT/BCT  
28

1 requirements each day that they fail to develop and fully implement BAT/BCT at the  
2 Facility.

3 **SECOND CAUSE OF ACTION**  
4 **Discharges of Contaminated Storm Water**  
5 **in Violation of Permit Conditions and the Act**  
6 **(Violations of 33 U.S.C. §§ 1311, 1342)**

6 69. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
7 fully set forth herein.

8 70. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition  
9 III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm  
10 water discharges that cause or threaten to cause pollution, contamination, or nuisance.  
11 Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation  
12 VI(B) of the 2015 Permit prohibit storm water discharges to any surface or ground  
13 water that adversely impact human health or the environment. Receiving Water  
14 Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and  
15 Discharge Prohibition III(D) of the 2015 Permit prohibit storm water discharges that  
16 cause or contribute to an exceedance of any applicable water quality standards  
17 contained in Statewide Water Quality Control Plan or the applicable Regional Board's  
18 Basin Plan.

19 71. Plaintiff is informed and believes, and thereupon alleges, that since at least  
20 December 8, 2011, Defendant has been discharging polluted storm water from the  
21 Facility in excess of the applicable water quality standard for zinc and the narrative  
22 quarter quality standard for suspended/settleable material in violation of Receiving  
23 Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and  
24 Discharge Prohibition III(D) of the 2015 Permit.

25 72. During every rain event, storm water flows freely over exposed materials,  
26 waste products, and other accumulated pollutants at the Facility, becoming  
27 contaminated with zinc, sediment, and other potentially un-monitored pollutants at  
28

1 levels above applicable water quality standards. The storm water then flows untreated  
 2 to channels that flow into the West Fontana Channel, which flows into the San  
 3 Seivaine Creek, which then flows into Reach 3 of the Santa Ana River.

4 73. Plaintiff is informed and believes, and thereupon alleges, that these  
 5 discharges of contaminated storm water are causing or contributing to the violation of  
 6 the applicable water quality standards in a Statewide Water Quality Control Plan and/or  
 7 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation  
 8 C(2) of the General Permit.

9 74. Plaintiff is informed and believes, and thereupon alleges, that these  
 10 discharges of contaminated storm water are adversely affecting human health and the  
 11 environment in violation of Receiving Water Limitation C(1) of the General Permit.

12 75. Every day since at least December 8, 2011, that Defendant has discharged  
 13 and continue to discharge polluted storm water from the Facility in violation of the  
 14 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33  
 15 U.S.C. § 1311(a). These violations are ongoing and continuous.  
 16

### 17 **THIRD CAUSE OF ACTION**

#### 18 **Failure to Prepare, Implement, Review, and Update** 19 **an Adequate Storm Water Pollution Prevention Plan** 20 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

21 76. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
 22 fully set forth herein.

23 77. The General Permit requires dischargers of storm water associated with  
 24 industrial activity to develop and implement an adequate SWPPP no later than  
 25 October 1, 1992.

26 78. Defendant has failed to develop and implement an adequate SWPPP for  
 27 the Facility. Defendant's ongoing failure to develop and implement an adequate  
 28 SWPPP for the Facility is evidenced by, *inter alia*, Defendant's failure to justify each

1 minimum and advanced BMP not being implemented.

2 79. Defendant has failed to update the Facility's SWPPP in response to the  
3 analytical results of the Facility's storm water monitoring.

4 80. Each day since December 8, 2011, that Defendant has failed to develop,  
5 implement and update an adequate SWPPP for the Facility is a separate and distinct  
6 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

7 81. Defendant has been in violation of the SWPPP requirements every day  
8 since December 8, 2011. Defendant continues to be in violation of the SWPPP  
9 requirements each day that it fails to develop and fully implement an adequate SWPPP  
10 for the Facility.

#### 11 **FOURTH CAUSE OF ACTION**

#### 12 **Failure to Develop and Implement an** 13 **Adequate Monitoring and Reporting Program** 14 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

15 82. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
16 fully set forth herein.

17 83. The General Permit requires dischargers of storm water associated with  
18 industrial activity to have developed and be implementing a monitoring and reporting  
19 program (including, *inter alia*, sampling and analysis of discharges) no later than  
20 October 1, 1992.

21 84. Defendant has failed to develop and implement an adequate monitoring  
22 and reporting program for the Facility.

23 85. Defendant's ongoing failure to develop and implement an adequate  
24 monitoring and reporting program are evidenced by, *inter alia*, its failure to conduct  
25 collect and analyze any storm water discharges from the Facility for many consecutive  
26 wet seasons.

27 86. Each day since at least December 8, 2011, that Defendant has failed to  
28

1 develop and implement an adequate monitoring and reporting program for the Facility  
2 in violation of the General Permit is a separate and distinct violation of the General  
3 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite  
4 monitoring and analytical results are ongoing and continuous violations of the Act.

5 **VII. RELIEF REQUESTED**

6  
7 Wherefore, Plaintiff respectfully requests that this Court grant the following  
8 relief:

9 a. Declare Defendant to have violated and to be in violation of the Act as  
10 alleged herein;

11 b. Enjoin Defendant from discharging polluted storm water from the  
12 Facility unless authorized by the 2015 Permit;

13 c. Enjoin Defendant from further violating the substantive and procedural  
14 requirements of the 2015 Permit;

15 d. Order Defendant to immediately implement storm water pollution  
16 control and treatment technologies and measures that are equivalent to BAT or BCT;

17 e. Order Defendant to immediately implement storm water pollution  
18 control and treatment technologies and measures that prevent pollutants in the Facility's  
19 storm water from contributing to violations of any water quality standards;

20 f. Order Defendant to comply with the Permit's monitoring and reporting  
21 requirements, including ordering supplemental monitoring to compensate for past  
22 monitoring violations;

23 g. Order Defendant to prepare a SWPPP consistent with the Permit's  
24 requirements and implement procedures to regularly review and update the SWPPP;

25 h. Order Defendant to provide Plaintiff with reports documenting the  
26 quality and quantity of their discharges to waters of the United States and their efforts  
27 to comply with the Act and the Court's orders;  
28



1 i. Order Defendant to pay civil penalties of up to \$37,500 per day per  
2 violation for all violations occurring since October 28, 2011 up to and including  
3 November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015,  
4 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and  
5 40 C.F.R. §§ 19.1 - 19.4;

6 j. Order Defendant to take appropriate actions to restore the quality of  
7 waters impaired or adversely affected by their activities;

8 k. Award Plaintiff's costs (including reasonable investigative, attorney,  
9 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.  
10 § 1365(d); and,

11 l. Award any such other and further relief as this Court may deem  
12 appropriate.  
13

14 Dated: February 6, 2017

Respectfully submitted,

15  
16 By: /s/ Douglas J. Chermak  
17 Douglas J. Chermak  
18 LOZEAU DRURY LLP  
19 Attorneys for Center for Community Action  
20 and Environmental Justice  
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